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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,855	09/26/2003	Renee Tufano-Sisca	SISCA	1273

26009 7590 01/28/2005  
ROGER M. RATHBUN  
13 MARGARITA COURT  
HILTON HEAD ISLAND, SC 29926

EXAMINER

MORAN, KATHERINE M

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 01/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/672,855	<b>Applicant(s)</b> TUFANO-SISCA, RENEE	
	<b>Examiner</b> Katherine M. Moran	<b>Art Unit</b> 3765	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Specification***

2. The disclosure is objected to because of the following informalities: pg.1, line 5: insert --, now abandoned-- after "2002".

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Kronenberger (U.S. 5,321,854). Kronenberger discloses the invention as claimed. Kronenberger teaches a baseball type cap 50' (Fig.7) for tightly encircling the hair of a person, the cap comprised of a

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flexible material and having a front portion comprising a visor extending outwardly from the front portion of the cap, the cap further having a pair of generally triangular flaps 104,106 extending rearwardly from the visor, the flaps each having lower edges, the lower edges having elongated hook and loop 110,112 located along the lower edges of the flaps, the securing means adapted to join the elongated lower edges of the flaps together to cause one of the flaps to substantially overlap the other of the flaps and form the cap. The cap further includes a crown portion 52", with a small opening 90" formed proximate the crown portion, with the opening configured to tightly encircle the hair of a person passing through the small opening.

Kronenberger teaches that the size of the opening can be modified by varying the overlap of the flaps. Kronenberger also teaches that the opening can be of any shape so long as the effective diameter is on the order of one or more inches. Accordingly, flaps 104,106 could be manipulated and mated to form a tear drop shaped opening with a narrow portion extending rearwardly and a wider portion located toward the apex of the crown.

5. Claims 1, 3, 6, 7, 10, 12, 13, 15, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Kang (Des. 296,496). Kang discloses the invention as claimed. Kang teaches a baseball type cap for tightly encircling the hair of a person, the cap comprised of a flexible material and having a front portion comprising a visor extending outwardly from the front portion of the cap, the cap further having a pair of flaps extending rearwardly from the visor, the flaps each having lower edges, the lower edges having elongated securing means located along the lower edges of the flaps, the securing means adapted to join the elongated lower edges of the flaps together to cause one of the flaps to substantially overlap the other of the flaps and form the cap. The cap further includes a crown portion, with a small opening formed proximate the crown

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portion, with the opening configured to tightly encircle the hair of a person passing through the small opening.

***Conclusion***

6. The prior art made of record on the attached PTO-892, and not relied upon, is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications should be directed to Primary Examiner Katherine Moran at (571) 272-4990. The examiner can be reached on Monday-Thursday from 8:30 am to 6:00 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert, may be reached at (571) 272-4983. The official and after final fax number for the organization where this application is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kmm

January 25, 2005



Katherine Moran

Primary Examiner, AU 3765